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Medical Technologies, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

INOMEDIC/INNOVATIVE
HEALTH APPLICATIONS, LLC,

Petitioner,

vs.

NONINVASIVE MEDICAL
TECHNOLOGIES, INC.,

Respondent.

Case No. 2:14-cv-01035-RFB-VCF

STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Post-judgment discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal

principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material may include the following documents and tangible things produced or otherwise exchanged¹:

- Information regarding the financial affairs of the defendants including, without limitation, income, expenses, and bank account information;
- Information protected by Federal Rule of Civil Procedure 5.2;
- Information subject to confidentiality agreements with non-parties or any pre-existing confidentiality agreements between the parties;
- Information that qualifies as a "trade secret" pursuant to the law of the jurisdiction where the trade secret was created, is stored or maintained; and
- Commercial information that is treated as confidential by the producing party and harm to the producing party's business interests may reasonably result if disclosure is not limited to certain individuals in accordance with this Order;
- Information appropriately marked as "Confidential" pursuant to the terms of this Order.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied

¹ These enumerated categories do not prejudice any party from challenging a confidentiality designation pursuant to Section 6 of this Order on the basis that confidential protection is not warranted, even if the information falls within one of the enumerated categories.

1 or extracted from confidential material; (2) all copies, excerpts, summaries,
2 or compilations of confidential material; and (3) any testimony,
3 conversations, or presentations by parties or their counsel that might reveal
4 confidential material. However, the protections conferred by this agreement
5 do not cover information that is in the public domain or becomes part of the
6 public domain through trial or otherwise.

7 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

8 **4.1 Basic Principles.** A receiving party may use confidential
9 material that is disclosed or produced by another party or by a non-party in
10 connection with this case only for prosecuting, defending, or attempting to
11 settle this litigation. Confidential material may be disclosed only to the
12 categories of persons and under the conditions described in this agreement.
13 Confidential material must be stored and maintained by a receiving party at
14 a location and in a secure manner that ensures that access is limited to the
15 persons authorized under this agreement.

16 **4.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
17 otherwise ordered by the court or permitted in writing by the designating
18 party, a receiving party may disclose any confidential material only to:

19 (a) the receiving party's counsel of record in this action, as
20 well as employees of counsel to whom it is reasonably necessary to disclose
21 the information for this litigation;

22 (b) the officers, directors, and employees (including in house
23 counsel) of the receiving party to whom disclosure is reasonably necessary
24 for this litigation, unless the parties agree that a particular document or
25 material produced is for Attorney's Eyes Only and is so designated;

26 (c) experts and consultants to whom disclosure is reasonably
27 necessary for this litigation and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A);

1 (d) the court, court personnel, and court reporters and their
2 staff;

3 (e) copy or imaging services retained by counsel to assist in
4 the duplication of confidential material, provided that counsel for the party
5 retaining the copy or imaging service instructs the service not to disclose
6 any confidential material to third parties and to immediately return all
7 originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the
10 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
11 otherwise agreed by the designating party or ordered by the court. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal
13 confidential material must be separately bound by the court reporter and
14 may not be disclosed to anyone except as permitted under this agreement;

15 (g) the author or recipient of a document containing the
16 information or a custodian or other person who otherwise possessed or
17 knew the information;

18 (h) other parties, or counsel of record for other parties, in this
19 lawsuit who have stipulated to this Order or whose clients are subject to this
20 Order (this exception does not include confidential information or
21 statements made or exchanged in connection with a mediation or settlement
22 to the extent they are considered privileged or protected from discovery
23 under federal or state law); or

24 (i) a Mediator and the Mediator's staff or other Dispute
25 Resolution professional who signed the "Acknowledgment and Agreement
26 to Be Bound" (Exhibit A) in order to conduct a mediation between some or
27 all of the parties.
28

1 **4.3 Filing Confidential Material.** Before filing confidential material
2 or discussing or referencing such material in court filings, the filing party
3 shall make reasonable effort to confer with the designating party to
4 determine whether the designating party will remove the confidential
5 designation, whether the document can be redacted, or whether a motion to
6 seal or stipulation and proposed order is warranted.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for**
9 **Protection.** Each party or non-party that designates information or items for
10 protection under this agreement must take care to limit any such
11 designation to specific material that qualifies under the appropriate
12 standards. The designating party must designate for protection only those
13 parts of material, documents, items, or oral or written communications that
14 qualify, so that other portions of the material, documents, items, or
15 communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified or that have been made
19 for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case
20 development process or to impose unnecessary expenses and burdens on
21 other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items
23 that it designated for protection do not qualify for protection, the
24 designating party must promptly notify all other parties that it is
25 withdrawing the mistaken designation.

26 **5.2 Manner and Timing of Designations.** Except as otherwise
27 provided in this agreement (*see, e.g.*, second paragraph of section 5.2(a)
28 below), or as otherwise stipulated or ordered, disclosure or discovery

1 material that qualifies for protection under this agreement must be clearly so
2 designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic
4 documents and deposition exhibits, but excluding transcripts of depositions
5 or other pretrial or trial proceedings), the designating party must affix the
6 word "CONFIDENTIAL" to each page that contains confidential material. If
7 only a portion or portions of the material on a page qualifies for protection,
8 the producing party also must clearly identify the protected portion(s) (e.g.,
9 by making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial or trial
11 proceedings: the parties must identify on the record, during the deposition,
12 hearing, or other proceeding, all protected testimony, without prejudice to
13 their right to so designate other testimony after reviewing the transcript.
14 Any party or non-party may, within fifteen days after receiving a deposition
15 transcript, designate portions of the transcript, or exhibits thereto, as
16 confidential.

17 (c) Other tangible items: the producing party must affix in a
18 prominent place on the exterior of the container or containers in which the
19 information or item is stored the word "CONFIDENTIAL." If only a portion
20 or portions of the information or item warrant protection, the producing
21 party, to the extent practicable, shall identify the protected portion(s).

22 **5.3 Inadvertent Failures to Designate.** If timely corrected, an
23 inadvertent failure to designate qualified information or items does not,
24 standing alone, waive the designating party's right to secure protection
25 under this agreement for such material. Upon timely correction of a
26 designation, the receiving party must make reasonable efforts to ensure that
27 the material is treated in accordance with the provisions of this agreement.
28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.** Any party or non-party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 designating party's confidentiality designation is necessary to avoid
5 foreseeable, substantial unfairness, unnecessary economic burdens, or a
6 significant disruption or delay of the litigation, a party does not waive its
7 right to challenge a confidentiality designation by electing not to mount a
8 challenge promptly after the original designation is disclosed.

9 **6.2 Meet and Confer.** The parties must make reasonable effort to
10 resolve any dispute regarding confidential designations without court
11 involvement. Any motion regarding confidential designations or for a
12 protective order must include a certification, in the motion or in a
13 declaration or affidavit, that the movant has engaged, or reasonably
14 attempted to engage, in a good faith meet and confer conference with other
15 affected parties in an effort to resolve the dispute without court action. The
16 certification must list the date, manner, and participants to the conference.
17 A good faith effort to confer requires a face-to-face meeting or a telephone
18 conference.

19 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge
20 without court intervention, the designating party may file and serve a
21 motion to retain confidentiality. The burden of persuasion in any such
22 motion shall be on the designating party. Frivolous challenges, and those
23 made for an improper purpose (*e.g.*, to harass or impose unnecessary
24 expenses and burdens on other parties) may expose the challenging party to
25 sanctions. All parties shall continue to maintain the material in question as
26 confidential until the court rules on the challenge.

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION, OR REQUESTED BY ANY NEW**
3 **PARTY TO THIS LITIGATION**

4 If a party is served with a subpoena or a court order issued in other
5 litigation that compels disclosure of any information or items designated in
6 this action as "CONFIDENTIAL," that party must:

7 (a) promptly notify the designating party in writing and include a
8 copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena
10 or order to issue in the other litigation that some or all of the material
11 covered by the subpoena or order is subject to this agreement. Such
12 notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the designating party whose confidential material may be
15 affected.

16 If any additional parties are added into this litigation and they request
17 access or copies of CONFIDENTIAL material, those additional parties shall
18 be subject to each and every of the restrictions on such CONFIDENTIAL
19 information set forth herein.

20 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a receiving party learns that, by inadvertence or otherwise, it has
22 disclosed confidential material to any person or in any circumstance not
23 authorized under this agreement, the receiving party must immediately (a)
24 notify in writing the designating party of the unauthorized disclosures, (b)
25 use its best efforts to retrieve all unauthorized copies of the protected
26 material, (c) inform the person or persons to whom unauthorized
27 disclosures were made of all the terms of this agreement, and (d) request
28

1 that such person or persons execute the "Acknowledgment and Agreement
2 to Be Bound" that is attached hereto as Exhibit A.

3 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
4 **OTHERWISE PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the receiving parties are those set forth in
8 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
9 to modify whatever procedure may be established in an e-discovery order or
10 agreement that provides for production without prior privilege review.
11 Parties shall confer on an appropriate non-waiver order under Fed. R. Evid.
12 502.

13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all
15 appeals, each receiving party must return all confidential material to the
16 producing party, including all copies, extracts and summaries thereof.
17 Alternatively, the parties may agree upon appropriate methods of
18 destruction.

19 Notwithstanding this provision, counsel are entitled to retain one
20 archival copy of all documents filed with the court, trial, deposition, and
21 hearing transcripts, correspondence, deposition and trial exhibits, expert
22 reports, attorney work product, and consultant and expert work product,
23 even if such materials contain confidential material. The confidentiality
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obligations imposed by this agreement shall remain in effect until a
designating party agrees otherwise in writing or a court orders otherwise.

ACKNOWLEDGED AND AGREED:

MORRIS LAW GROUP

LAW OFFICE OF HAYES & WELSH

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Noninvasive Medical Technologies,
Inc.

Attorneys for Petitioner
Inomedic/Innovative Health
Applications, LLC

ORDER

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATE: 6-27-2017

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District
Court for the District of Nevada in the case of *Inomedic/Innovative Health
Applications, LLC v Noninvasive Medical Technologies, Inc., 2:14-cv-01035-RFB-
VCF*. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District
Court for the District of Nevada for the purpose of enforcing the terms of
this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____